

Hon. John C. Coughenour, Judge

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ROXANNE TUNISON and JON  
TUNISON, wife and husband, and the  
marital community comprised thereof; and  
ELIAS TUNISON, a single man,

Plaintiffs,

v.

SAFECO INSURANCE COMPANY OF  
ILLINOIS, a foreign corporation,

Defendant.

No. 2:19-cv-00503-JCC

PLAINTIFF'S PRETRIAL STATEMENT

**I. Federal Jurisdiction.**

Jurisdiction of the United States District Court is proper in this action as a result of removal from the Superior Court of the State of Washington for King County, based on complete diversity of citizenship and an amount in controversy equal to or in excess of \$75,000.00. [28 USC § 1332]

**II. Claims Plaintiffs Will Pursue at Trial.**

Plaintiffs will pursue at trial the following claims:

1. UIM/PIP benefits/damages;
2. Breach of Contract;

- 1 3. Washington Insurance Fair Conduct violation/Damages RCW 48.30 et seq.
- 2 4. Washington Consumer Protection Violations/Damages RCW 19.86 et seq.
- 3 5. Breach of duty of good faith/bad faith claims; and
- 4 6. Plaintiffs' claims negligent and intentional conduct by Safeco breached its
- 5 statutory, contractual and common law duties.

### 6 **III. Undisputed Relevant Facts and Facts Plaintiffs Admit.**

7 1. Defendant Safeco issued to Plaintiffs a personal automobile insurance policy  
8 which included auto coverage for general liability, PIP, UIM and other coverages for the policy  
9 period from February 7, 2016 to February 7, 2017.

10 2. Plaintiffs paid the premiums due to Defendant Safeco for coverage.

11 3. Plaintiffs, Roxanne Tunison and her son, Elias Tunison, were involved in a motor  
12 vehicle collision September 23, 2016 with Natalie Tews who rear-ended the Tunison vehicle.

13 4. Plaintiffs, Roxanne Tunison and her son, Elias Tunison, suffered injuries as a  
14 result of the motor vehicle collision September 23, 2016. Plaintiffs settled their third party claims  
15 against Ms. Tews in exchange for her Pemco policy limits of \$100,000 which was split between  
16 Plaintiffs \$95,973 and Jim Jacobsen, driver of another vehicle involved, \$4,027.

17 5. Plaintiffs, Roxanne Tunison and Elias Tunison received PIP benefits from  
18 Defendant Safeco.

19 6. Defendant Safeco declined, in writing, a *Hamilton* buy-out of the third-party tort  
20 claims against Ms. Tews prior to Pemco payment of the liability policy limits which Plaintiffs  
21 accepted.

22 7. On January 18, 2019, Plaintiffs, through counsel, Brian P. Russell, served a 20-  
23 day Notice of Intent to the Washington State Insurance Commissioner, copy to Safeco claims  
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1 representative, Sarah Grossman, and to Safeco Insurance corporate headquarters, to pursue  
2 claims under the Insurance Fair Conduct Act.

3 8. Plaintiffs' Notice of Intent alleged causes of action against Defendant Safeco for  
4 unreasonable denial and delay of their claims for payment of benefits; as well as specific  
5 violations of WAC 284-30-330, "Specific Unfair Claims Settlement Practices Defined".

6 9. Plaintiffs notified Defendant Safeco that the Notice of Intent did not waive  
7 additional causes of action for insurance bad faith, breach of contract, negligence, or violations of  
8 the Washington State Consumer Protection Act.

9 **IV. Issues of Law.**

- 10 1. Did Safeco breach its contract (policy) with its insureds (Tunisons)?
- 11 2. Did Safeco breach its duty of good faith (Bad Faith) in its handling of the
- 12 Tunisons' insurance claims?
- 13 3. Did Safeco violate the Washington Insurance Fair Conduct Act RCW 48.30.010 et
- 14 seq?
- 15 4. Did Safeco violate the Washington Consumer Protection Act RCW 19.86.090?
- 16 5. Was Safeco negligent in its handling of the Tunisons' insurance claims?
- 17 6. Did Safeco unreasonably deny the Tunisons' claims for coverage or benefits under
- 18 its UIM and PIP coverage?
- 19 7. Did Safeco unreasonably refuse to arbitrate the Tunisons' claims for insurance
- 20 benefits?
- 21 8. What is the appropriate amount of insurance policy benefits to be paid by Safeco
- 22 to the Tunisons?
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- 1           9.       What is the appropriate amount of damages to be paid by Safeco to the Tunisons  
2                   for their damages caused by its breach of its duties to the Tunisons?

3           **V. Witnesses Who Might Be Called By Plaintiffs**

4           1.       Roxanne Tunison, Plaintiff, c/o Brian P. Russell, 17820 First Avenue South, Suite  
5           102, Normandy Park WA 98148, will testify;

6           2.       Jon Tunison, Plaintiff, c/o Brian P. Russell, 17820 First Avenue South, Suite 102,  
7           Normandy Park WA 98148, will testify;

8           3.       Elias Tunison, Plaintiff, c/o Brian P. Russell, 17820 First Avenue South, Suite  
9           102, Normandy Park WA 98148, will testify;

10          4.       Marcus Tunison, Son/Brother, 8870 Command Pt. Rd., Olalla WA 98359 (406)  
11          471-6504, possible witness only;

12          5.       Taylor Tunison, Son/Brother, 4806 – 1<sup>st</sup> Ave. N.W., Seattle WA 98107 (206) 250-  
13          5218, will testify;

14          6.       Josiah Tunison, Son/Brother, 8860 Command Point Rd., Olalla WA 98359, (206)  
15          250-7822, possible witness only;

16          7.       Tricia Schuler, Friend, 19805 N. 198<sup>th</sup> Pl., Jupiter FL 33458-1823, (561) 352-  
17          8374, will testify;

18          8.       Marlene Mann, Grandmother, 4106 S.W. Lander, Seattle WA 98116 (206) 937-  
19          7072, possible witness only;

20          9.       Sacha Mann, Niece/Cousin, 4106 S.W. Lander, Seattle WA 98116 (206) 291-  
21          7731, will testify;

22          10.      Alexandra Greenwald, Friend, 3045 – 20<sup>th</sup> Ave. West, Seattle WA 98199 (941)  
23          685-9700, possible witness only;

1           11.     Laurie Streck, Aunt, 43 Pioneer Drive, Port Ludlow WA 98365;(206) 938-1190,  
2 will testify;

3           12.     Ben Douglas, Friend, 4207 SW Hill Street, Seattle, WA. 96116, (206) 658-7247,  
4 will testify;

5           13.     Jillian K. Smith, Elias' girlfriend, 2401 No. 70th St., Unit X, Scottsdale AZ  
6 85257, (206) 334-4944, possible witness only;

7           Plaintiffs' relatives and friends will testify regarding all the issues including, but not  
8 limited to, the physical and emotional impact of the September 23, 2016, motor vehicle collision  
9 on Plaintiffs.

10          14.     Safeco Insurance Company 30(b)(6) Representative, c/o John Silk, Chris Pierce-  
11 Wright, Wilson Smith Cochran Dickerson, 901 Fifth Avenue, Suite 1700, Seattle WA 98164,  
12 Seattle WA 98164-2050 (206) 623-4100, will testify;

13          15.     Sarah Grossman, Adjuster, Safeco Insurance Company of Illinois, Sr. Claims  
14 Resolution Specialist I, BI, P.O. Box 5155097, Los Angeles CA 90051 (509) 891-0305. Sarah is  
15 the Claims Adjuster assigned to Plaintiffs' claims. She will be called to testify about her  
16 management of the claim including, but not limited to, her review of Plaintiffs' damages, her  
17 valuation of the claims and other pertinent matters, possible witness only;  
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19          16.     Ly oan Mey, Senior Claims Resolution Specialist III, Safeco Insurance Company  
20 of Illinois, c/o John Silk, Chris Pierce-Wright, Wilson Smith Cochran Dickerson, 901 Fifth  
21 Avenue, Suite 1700, Seattle WA 98164, Seattle WA 98164-2050 (206) 623-4100, will testify;  
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23          17.     Natalie Tews, At-fault-driver/Defendant in *Tunison v. Tews*, 3903 S.W. Webster  
24 Street, Seattle WA 98136-2127, (206) 475-3974, may testify regarding facts of the motor vehicle  
25 collision that occurred on September 23, 2016, possible witness only;

1           18.     K. Stuckey, Serial #6600, Seattle Police Officer, Seattle Police Department, 610  
2 Fifth Avenue, Seattle WA 98104 (206) 625-5011, Investigating Officer, may testify regarding the  
3 facts of the motor vehicle collision that occurred on September 23, 2016, possible witness only;

4           19.     Bryan Stevens, Golf Coach, Director of Instruction, The Club at Snoqualmie  
5 Ridge, 36005 S.E. Ridge St., Snoqualmie WA 98065 (206) 619-4575, will testify;

6           20.     Mary Owen, 2033 – 2<sup>nd</sup> Ave., Suite 1103, Seattle WA 98121, (206) 415-8593,  
7 Insurance Expert. Ms. Owen is an expert in handling of claim files and serves as a consultant for  
8 related subjects including, but no limited to, insurance bad faith. She will testify and base her  
9 opinions on her education, training and experience, will testify;

10           21.     M.J. Dena, c/o Brian P. Russell, Russell Law, PLLC, 17820 – 1<sup>st</sup> Ave. So., Ste.  
11 102, Normandy Park WA 98148 (206) 244-3200. Ms. Dena is a paralegal at the Russell Law  
12 office. Ms. Dena will testify that, to her knowledge and belief, no email or correspondence dated  
13 February 15, 2019, from John Silk, was received by Russell Law. Further, Ms. Dena will testify  
14 that no follow-up email, correspondence or telephone call from John Silk or anyone from the law  
15 firm of Wilson, Smith, Cochran, Dickerson was received by Russell Law until after this lawsuit  
16 was filed, will testify;

17           22.     Robin Mida Hendrix, ARNP, Highline Medical Center Emergency Services,  
18 16251 Sylvester Rd. S.W., Burien WA 98166, will testify regarding the injuries sustained by  
19 Roxanne Tunison and Elias Tunison and the emergency medical treatment rendered to Plaintiffs  
20 at Highline Medical Center on September 23, 2016, possible witness only;

21           23.     Iseasa Combs, ARNP (Nurse Practitioner), Maria L. Flores, M.D., CHI Franciscan  
22 Medical Group, 16251 Sylvester Road S.W., Burien WA 98148 (206) 965-4100. ARNP Combs  
23 and Dr. Flores rendered treatment to Plaintiff, Roxanne Tunison, related to the September 23,  
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1 2016 motor vehicle collision. They will testify regarding the injuries sustained by Mrs. Tunison  
 2 and her son, Elias Tunison and the medical treatment rendered to Mrs. Tunison and her son, Elias  
 3 Tunison, their disability, and the need for future treatment, possible witness only;

4 24. Matthew Webber, ARNP, CHI Franciscan Medical Group, 4700 Pt. Fosdick Drive  
 5 N.W., Stes. 202 & 203, Gig Harbor WA 98335 (253) 858-9191. Mr. Webber rendered treatment  
 6 to Plaintiff, Roxanne Tunison, related to the September 23, 2016 motor vehicle collision. He will  
 7 testify regarding the injuries sustained by Mrs. Tunison and the medical treatment rendered to  
 8 Mrs. Tunison, her disability, and the need for future treatment, possible witness only;

9 25. Sofina Lin Rozich, LAC, EAMP, Instill Acupuncture, 7116 Woodlawn Ave. N.E.,  
 10 Seattle WA 98115 (503) 741-9066. Ms. Rozich rendered treatment to Plaintiffs, Roxanne  
 11 Tunison and Elias Tunison, related the September 23, 2016 motor vehicle collision. She will  
 12 testify regarding the injuries sustained by Mrs. Tunison and her son, Elias Tunison, and the  
 13 medical treatment rendered to Mrs. Tunison and her son, Elias Tunison, their disability, and the  
 14 need for future treatment, possible witness only;

15 26. Dr. Harry G. Sese, D.C., Dr. J. Kalinowski, D.C., Northwest Sports Performance  
 16 & Wellness, 1823 – 115<sup>th</sup> Ave. N.E., Bellevue WA 98004, (425) 221-7253. Drs. Sese and  
 17 Kalinowski rendered treatment to Roxanne Tunison and Elias Tunison related to the September  
 18 23, 2016 motor vehicle collision. They will testify regarding the injuries sustained by Roxanne  
 19 Tunison and Elias Tunison and the medical treatment rendered to Mrs. Tunison and her son, Elias  
 20 Tunison, their disability and the need for future treatment, will testify;

21 27. Sam Saleba, LMT, 1823 – 115<sup>th</sup> Ave. N.E., Bellevue WA 98004, (425) 221-7253.  
 22 Ms. Saleba may testify regarding the injuries sustained by Roxanne Tunison and Elias Tunison  
 23 related to the September 23, 2016 motor vehicle collision and the treatment she rendered to  
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1 Roxanne Tunison and Elias Tunison, possible witness only;

2 28. Angela Messerli, DPT, Life in Balance Physical Therapy & Pilates, 5410  
3 California Ave. S.W., Unit 101, Seattle WA 98136-1562, (206) 913-8082. Roxanne Tunison was  
4 referred by Dr. Flores for physical therapy. Ms. Messerli will testify regarding the injuries  
5 sustained by Roxanne Tunison related to the September 23, 2016 motor vehicle collision and the  
6 treatment rendered to Mrs. Tunison, possible witness only;

7 29. Taylor Campbell, LMT, 3715 – 56<sup>th</sup> St., Gig Harbor WA 98335 (253) 851-5138.  
8 Ms. Campbell will testify regarding the injuries sustained by Roxanne Tunison related to the  
9 September 23, 2016 motor vehicle collision and the treatment she rendered to Roxanne Tunison,  
10 possible witness only;

11 30. David Caselli, LMT, NMT, Caselli's Therapeutic Massage, 51657 U.S. Highway  
12 93, Polson, MT 59860 (714) 812-1194. Mr. Caselli provided therapeutic massage to Roxanne  
13 Tunison and will testify regarding the injuries sustained by Roxanne Tunison related to the  
14 September 23, 2016 motor vehicle collision and the treatment he rendered to Plaintiff, Roxanne  
15 Tunison, possible witness only;

16 31. A. Mohit, M.D., Ph.D., NeoSpine-Harbor Spine and Joint Center, 4700 Point  
17 Fosdick Dr. N.W., Ste. 205, Gig Harbor WA 98335 (253) 841-0842 x2257. Dr. Mohit rendered  
18 treatment to Roxanne Tunison related to the September 23, 2016 motor vehicle collision. Dr.  
19 Mohit will testify regarding the injuries sustained by Roxanne Tunison and the medical treatment  
20 rendered to Mrs. Tunison, her disability and the need for future treatment, possible witness only;

21 32. Dr. Grant Lohse, M.D., Proliance Orthopaedics and Sports Medicine, Proliance  
22 Highlands Medical Center, 510 – 8<sup>th</sup> Ave. N.E., Ste. 200, Issaquah WA 98029. Dr. Lohse will  
23 testify regarding the injuries sustained by Elias Tunison related to the September 23, 2016 motor  
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1 vehicle collision and the medical treatment he rendered to Plaintiff, Elias Tunison, will testify;

2 33. Jason C. King, M.D., Orthopedic Physician Associates, 601 Broadway, Seattle  
3 WA 98122, (206) 309-4943. Dr. King will testify that he examined Elias Tunison regarding the  
4 injuries he sustained related to the September 23, 2016 motor vehicle collision and the medical  
5 treatment he rendered to Plaintiff, Elias Tunison, possible witness only;

6 34. Brad S. Defenbaugh, PT, Peak Sports and Spine Physical Therapy, 1 Lake  
7 Bellevue Dr., Suite 100, Bellevue, WA 98005, (425) 462-4330. Mr. Defenbaugh rendered  
8 treatment to Elias Tunison related to the September 23, 2016 motor vehicle collision. Mr.  
9 Defenbaugh will testify regarding the injuries sustained by Elias Tunison and the treatment he  
10 rendered to Elias Tunison and his disability, possible witness only.

11 VI. Exhibits To Be Offered By Plaintiffs:

12 Re: Roxanne Tunison – selected portions of records:

- 13 1. Highline Medical Center ER chart note and billing  
14 2. Highline ER Physicians billing  
15 3. Tacoma Radiological Associates Radiology report and billing record  
16 4. CHI Franciscan Health Clinic records and billing  
17 5. Instill Acupuncture notes and billing  
18 6. Northwest Sports Performance & Wellness Center chart notes and bill  
19 7. Sam Saleba, LMT massage billing  
20 8. Life in Balance Physical Therapy and Pilates chart notes and billing  
21 9. Taylor Campbell, LMT massage billing  
22 10. Caselli's Therapeutic Massage chart note and billing  
23 11. Alex Mohit, M.D., NeoSpine-Harbor Spine and Joint Center records and billing  
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12. Microsurgical Spine Center billing

Re: Elias Tunison

13. Highline Medical Center ER chart note and billing

14. Highline ER Physicians billing

15. Tacoma Radiological Associates, P.S. report and billing

16. CHI Franciscan Health Clinic records and billing

17. Brad S. Defenbaugh, PT, Peak Sports and Spine PT records and billing

18. Dr. Grant Lohse, M.D., Proliance Orthopaedics & Sports records and billing

19. Instill Acupuncture notes and billing

20. Northwest Sports Performance & Wellness Center chart notes and billing

21. Sam Saleba, LMT chart note and billing

22. Pacific Medical, Inc. billing

Plaintiffs intend to present exhibits in electronic format to jurors.

## VII. Deposition Transcripts

Dr. Grant Lohse, M.D. – Portions will be designated after receipt of transcript

Dated: May 19, 2020.

s/Brian P. Russell

Brian P. Russell, WSBA #10715

Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I certify that on May 19, 2020, I served the foregoing document electronically on the persons listed below:

silk@wscd.com  
pierce-wright@wscd.com  
jay@wscd.com  
page@wscd.com

SIGNED this 19<sup>th</sup> day of May 2020, at Normandy Park, Washington.

s/M.J. Dena  
M.J. Dena, Paralegal  
Russell Law, PLLC  
17820 – 1<sup>st</sup> Avenue South, #102  
Normandy Park WA 98148  
bprparalegal@comcast.net